S155094

IN THE SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

After a Decision by the Court of Appeal
Fourth Appellate District, Division Three
(Case Nos. G036096, G036408, G036868)

RESPONDENTS' CONSOLIDATED ANSWER BRIEF TO BRIEFS OF AMICI CURIAE

HOLME ROBERTS & OWEN LLP
JOHN R. SHINER (Bar No. 43698)
777 South Figueroa Street, Suite 2800
Los Angeles, California 90017-5826
(213) 572-4300 • FAX: (213) 572-4400
john.shiner@hro.com

HORVITZ & LEVY LLP
FREDERIC D. COHEN (Bar No. 56755)
JEREMY B. ROSEN (Bar No. 192473)
15760 Ventura Boulevard, 18th Floor
Encino, California 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
fcohen@horvitzlevy.com
jrosen@horvitzlevy.com

Attorneys for Plaintiffs and Respondents
JANE HYDE RASMUSSEN; THE RIGHT REV. ROBERT M. ANDERSON; THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES; THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Court Rules

Miscellaneous

IN THE
SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

RESPONDENTS' CONSOLIDATED ANSWER BRIEF TO BRIEFS OF AMICI CURIAE

INTRODUCTION

Plaintiffs submit this Consolidated Answer Brief in response to the six amici curiae briefs filed in support of defendants by the Rev. Jose Poch, et al. (Poch), the Presbyterian Lay Committee (PLC), Iglesia Evangelica Latina, Inc., et al. (Iglesia), Thomas Lee and Rev. Peter Min (Lee), The Charismatic Episcopal Church (CEC), and The Diocese of San Joaquin (San Joaquin).

Only Poch attempts to defend the application of the anti-SLAPP statute to this case. Poch is wrong for the same reason the trial court erred – this lawsuit does not challenge anyone's right of petition.

The other five briefs raise two principal propositions: 1) the court should adopt the neutral principles approach for resolving church property disputes because the principle of government approach would lead the court into a constitutional quagmire; and 2)

the court should disregard the plain language of Corporations Code section 9142 because it would grant hierarchical church organizations a special benefit in violation of the Establishment Clause. Neither argument passes muster.

To begin with, amici curiae's various constitutional challenges are not directed to this case but rather a different, hypothetical future situation in which such concerns might be relevant. For example, they focus on several hypothetical scenarios, such as:

- where a real dispute exists as to whether a religious organization is hierarchical (Iglesia Br. 12; PLC Br. 17); here, as illustrated by a consistent line of cases nationwide, there is no dispute— the Episcopal Church is unquestionably hierarchical. (ABOM 9-16, 40.)
- where it is unclear whether a subordinate body agreed to be bound by a superior organization's constitution and rules (PLC Br. 4-6); here, there is no doubt—St. James promised and declared it would "be forever held under" and "bound by" the Church's Constitutions and Canons. (ABOM 16-17.)
- where it is "clearly stated in church documents and government deeds that the property was in fact owned by members of the local congregation" (Iglesia Br. 11); here, the opposite is true—Canon I.7(4) explicitly provides all real and personal property is "held in trust for [the Episcopal] Church and the Diocese." (ABOM 15-16.)

- where a hierarchical church "unilaterally adopted" a trust rule against the will of a local church (Iglesia Br. 21); here, the Church's General Convention adopted Canon I.7(4) in 1979 by majority vote through a democratic process involving delegates representing each parish, including St. James, which never expressed any objection to the Canon during the ensuing 25 years. (ABOM 8, 15, 25.)
- where a hierarchical church receives favorable treatment not afforded secular organizations; here, the result reached by the Court of Appeal is consistent with how a similarly situated secular voluntary association or charitable trust would be treated. (See *post*, pp. 17-30.)

In any event, amici curiae's constitutional analysis is flawed and does not support defendants' position. The United States Supreme Court, in *Jones v. Wolf* (1979) 443 U.S. 595 [99 S.Ct. 3020, 61 L.Ed.2d 775] (*Jones*), explicitly permitted States to adopt the principle of government approach in church property disputes. While amici curiae advance the theory that "modern jurisprudence" has somehow superseded *Jones'* affirmation of the principle of government approach (PLC Br. 11-12, 14), recent cases refute this academic criticism. Further, neither the principle of government approach nor section 9142 provide an unconstitutional preference to hierarchical religious organizations. Rather, enforcement of Canon I.7(4) in this case is consistent with generally applicable law relating to secular voluntary associations and charitable trusts. It is the principle of government approach, as

opposed to neutral principles, which minimizes the judiciary's entanglement in religious issues. Finally, the authority relied upon by amici curiae amply demonstrates that, even were the court to apply neutral principles, plaintiffs prevail.

In the end, the record before this court—as opposed to the hypothetical scenarios addressed by amici curiae—compels the same result under both the principle of government and neutral principles approaches.

- The principle of government approach requires courts to defer to 1) a hierarchical church and 2) to its rules regarding local church property—the Episcopal Church is such a church and Canon I.7(4) is such a rule.
- Under neutral principles, the Church still prevails—Canon I.7(4) must be enforced under the clear directive in *Jones*, and every appellate court in the country addressing this precise issue has so held.

ARGUMENT

I.

DEFENDANTS CANNOT SATISFY THE FIRST PRONG OF THE ANTI-SLAPP STATUTE BECAUSE PLAINTIFFS' CLAIMS DO NOT ARISE FROM PROTECTED PETITIONING ACTIVITY.

The Court of Appeal, relying on well-established law developed by this court, concluded correctly that plaintiffs' claims are not based on defendants' protected petitioning activity, but rather are grounded on their wrongful assertion of dominion and control over parish property. (See typed opn., 5, 8; ABOM 23-28.) Therefore, the anti-SLAPP statute does not apply and defendants' motion fails under the statute's first prong.

Poch asserts the Court of Appeal viewed the parties' public dispute too narrowly (Poch Br. 21), and contends plaintiffs' subjective "intent to chill" must be considered. (Poch Br. 37-45.) Neither point has merit.

Regardless of whether the broader context of the parties' dispute is characterized as disaffiliation from the Church or disagreement over ordination of gay clergy, plaintiffs' actual claims are simply not based on defendants' protected free speech activity. Rather, as the Court of Appeal explained, "[defendants] are being sued for asserting *control over the local parish property* to the exclusion of a *right to control asserted*

by the plaintiffs. The fact that a religious controversy may have prompted the dispute over the right to control the property does not mean that the defendants are being sued for the 'protected activity' of changing their religion." (Typed Opn., 5, 8, original emphasis.)

To overcome this irrefutable logic, Poch suggests the court must consider plaintiffs' alleged subjective intent to chill defendants' right of petition.[1/] Poch acknowledges this court has stated that a plaintiff's subjective intent is not relevant under the anti-SLAPP statute (Poch Br. 37), but submits the court's "comment" was "an unnecessary and perhaps unintended statement." (Poch Br. 38.) Not so.

This court has painstakingly explained in several decisions that a plaintiff's subjective intent is immaterial when applying the anti-SLAPP statute. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 ["But [plaintiff's] subjective intent, as discussed, is not relevant under the

---

1/ Even if plaintiffs' subjective motivation were relevant (it is not), there is absolutely no evidence in the record to support a finding that the lawsuit was intended to chill defendants' protected free speech activity rather than assert a valid claim to the property. Defendants submitted no evidence the Diocese had ever simply stood by and allowed disassociating clergy or parish members to retain parish property. To the contrary, the Bishop Diocesan, like the head of any nonprofit organization, had a fiduciary duty to the Diocese and its members to take appropriate action to preserve property of the Diocese and continue the parish's ministry for current and future Church members. (4 AA 737, 834-835; 5 AA 1105.) Moreover, the anti-SLAPP statute protects only the right of petition. Even if defendants' characterization of plaintiffs' intent were correct, defendants' right of petition is not implicated because they allege their conduct involved the free exercise of religion. (*Castillo v. Pacheco* (2007) 150 Cal.App.4th 242.)

anti-SLAPP statute.... To focus on [plaintiff's] litigation tactics, rather than on the substance of [plaintiff's] lawsuit, risks allowing [defendant] to circumvent the showing expressly required by section 425.16, subdivision (b)(1) that an alleged SLAPP *arise from* protected speech or petitioning" (original emphasis)]; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 ["[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute. [Citation.] Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such. [Citation.] In the anti-SLAPP context, the critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity" (original emphasis)]; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 62 ["[A] neutral, easily applied definition for SLAPP's 'avoids subjective judgments' about filers' or targets' motives, good faith, or intent," quoting Canan & Pring, SLAPPs: Getting Sued for Speaking Out (1996) p. 8]; see also Braun, *California's Anti-SLAPP Remedy After Eleven Years* (2003) 34 McGeorge L.Rev. 731, 737 ["It is this objective legal quality of the claims themselves, rather than the subjective intentions of the filers or the practical effects on the targets, which determines whether they are subject to the special motion to strike"].)

The Court of Appeal correctly concluded defendants cannot satisfy the first prong of the anti-SLAPP statute. On this basis alone, the motion should be denied, and the trial court's order reversed.

II.

THE PRINCIPLE OF GOVERNMENT APPROACH IS CONSTITUTIONAL.

A. *Jones* explicitly permits states to adopt the principle of government approach in church property disputes.

In *Jones*, the United States Supreme Court explicitly recognized each state may continue to apply the principle of government approach in church property disputes. "[T]he First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, 'a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" (*Jones, supra,* 443 U.S. at p. 602, original emphasis.)

Far from overruling the doctrine of church autonomy for hierarchical religious organizations established in earlier decisions, *Jones* emphasized that, whatever method a state chooses to adopt, "the [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." (*Jones, supra,* 443 U.S. at p. 602, citing *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 724-725 [96 S.Ct. 2372, 49 L.Ed. 151 (*Serbian Orthodox Diocese*) and

Watson v. Jones (1871) 80 U.S. (13 Wall.) 679, 733-734 [20 L.Ed. 666] (*Watson*).)[2/]

B. *Jones'* affirmation of the principle of government approach has not been diminished by subsequent decisions.

Despite *Jones'* affirmation both of the principle of government and neutral principle approaches as constitutionally permissible methods for resolving church property disputes, Iglesia and PLC nevertheless contend *Jones* should not apply here. Iglesia, relying upon Justice Rehnquist's *dissent* in *Serbian Orthodox Diocese* (which preceded his joining the majority in *Jones*) and a 1982 Louisiana Supreme Court decision, concludes the principle of government approach "violates the fundamental principle prohibiting courts from fashioning rules that advance or inhibit religion." (Iglesia Br. 18.) PLC, relying upon *Larkin v. Grendel's Den, Inc.* (1982) 459 U.S. 116 [103 S.Ct. 505, 74 L.Ed. 2d 297] (*Larkin*), and a 1984 decision by the New York Court of Appeals, asserts that "more recent Religion Clause decisions make clear that the

---

2/ Indeed, four justices in *Jones* would have found the neutral principles approach unconstitutional. (*Jones, supra,* 443 U.S. at p. 617 (dis. opn. of Powell, J.)["The only course that achieves this constitutional requirement is acceptance by civil courts of the decisions reached within the polity chosen by the church members themselves. The classic statement of this view is found in *Watson,* [*supra,* 80 U.S. (13 Wall.) at pp. 728-729]"].)

Constitution does not permit such judicial deference to an assertion of religious hierarchy." (PLC Br. 14.)[3/]

Amici curiae, however, point to *no case* that holds *Jones* (and its affirmation that the principle of government approach is constitutional) has been overruled or undercut by subsequent decisions. Indeed, as shown below, all recent decisions reach the opposite conclusion.

1. Numerous state courts recently reaffirmed the validity of the principle of government approach.

Contrary to the arguments of Iglesia and PLC, numerous recent decisions by state high courts recognize *Jones* still controls the constitutional analysis in church property disputes and permits state courts to apply the principle of government approach. (See *Second Intern. Baha'i Council v. Chase* (2005) 326 Mont. 41, 45 [106 P.3d 1168, 1172] ["In a series of cases culminating in *Jones*, the United States Supreme Court approved of two independent approaches to disputes involving church property. Civil courts may defer to the decision-making authority of a hierarchical church. Under that approach, the court avoids entanglement in ecclesiastical controversy by accepting the judgment of the established decision-making body of the religious

---

3/ *Larkin* is inapposite, as it held a state statute unconstitutionally delegated the government's zoning power to churches. (*Larkin, supra,* 459 U.S. at p. 127.) The principle of government approach does not delegate traditional governmental powers to churches, but rather acknowledges the form of self-governance adopted by church members.

organization"]; *Conference Bd. of Trustees v. Culver* (2001) 243 Wis.2d 394, 404 [627 N.W.2d 469, 476, fn. 8] (*Culver*) ["A recognized alternative to the neutral principles approach . . . is deference to the highest church authority in a hierarchical church in resolving church property disputes" (citation omitted)]; *E. Lake Met. Church v. United Met. Church* (Del. 1999) 731 A.2d 798, 805 ["In response to the Free Exercise and Establishment Clauses of the United States Constitution, courts must proceed with caution in resolving civil disputes within religious organizations. To avoid impermissible inquiry into religious doctrine or practice, two approaches have emerged: the compulsory deference approach (also referred to as the polity approach), and the neutral principles of law approach" (fn. omitted)]; *Rector, Wardens v. Episcopal Church* (1993) 224 Conn. 797, 804 [620 A.2d 1280] ["Recognizing that each of these possible approaches [compulsory deference or neutral principles] for resolving church property disputes has received explicit approval by the United States Supreme Court and that we were free to adopt either approach or any other approach that did not involve consideration of doctrinal matters, we decided that the *Jones* and *Watson* methods should be read to complement one another"].)

2. Recent federal court decisions have reached the same conclusion.

Many recent federal courts similarly have recognized that *Jones* permits state courts to apply the principle of government approach to

resolve church property disputes. (See *Tomic v. Catholic Diocese of Peoria* (7th Cir. 2006) 442 F.3d 1036, 1039, citing *Jones, supra,* 443 U.S. at pp. 602-603 and *Watson, supra,* 80 U.S. (13 Wall.) at pp. 726-729 ["If a local congregation of a hierarchical sect seized the local church, changed the locks, and declared itself an independent religious organization, a court would, upon suit by the hierarchy, enjoin the seizure"]; *Maktab Tarighe Oveyssi Shah Maghsoudi v. Kianfar* (9th Cir. 1999) 179 F.3d 1244, 1248 ["The First Amendment requires only that courts 'decide church property disputes without resolving underlying controversies over religious doctrine.' [Citation.] The Supreme Court has recognized two methods of accomplishing this goal . . . [¶] . . . Civil courts may follow *Watson v. Jones* . . . and its progeny, in deferring to the decision-making authorities of hierarchical churches. Under that approach, the court avoids entanglement in religious issues by accepting the decision of the established decision-making body of the religious organization"]; *Scotts African Un. Meth. v. Conf. of African Un.* (3d Cir. 1996) 98 F.3d 78, 89 [*Jones* "gives shape to the proper modern judicial approach to intrachurch disputes"]; *Crowder v. Southern Baptist Convention* (11th Cir. 1987) 828 F.2d 718, 724 ["The *Jones* majority thus recognized and reaffirmed the importance of the second major first amendment interest favoring judicial noninvolvement in a religious dispute: that where religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, 'the Constitution requires that civil courts accept their decisions as binding upon them'"]; *United States v. Moon* (2d Cir. 1983) 718 F.2d

1210, 1228 ["In *Jones* the Supreme Court held that the First Amendment prohibits the resolution of intra-church property disputes by civil courts interpreting religious doctrine, and required that civil courts defer the resolution of such issues to the highest hierarchical church organization"].)[4/]

Thus, recent opinions uniformly have continued to embrace *Jones'* holding that both the principle of government and neutral principles approaches are constitutionally permissible methods for resolving church property disputes.

4/ Even the authorities relied upon by PLC and Iglesia acknowledge the principle of government approach is constitutionally permissible. The New York Court of Appeals, in a case relied upon by PLC (PLC Br. 25), confirms that "[j]udicial deference to a hierarchical organization's internal authority remains an acceptable alternative mode of decision." (*First Presbyterian Church of Schenectady v. United Presbyterian Church* (1984) 62 N.Y.2d 110, 121 [464 N.E.2d 454, 460].) Similarly, the law review article relied upon by Iglesia (Iglesia Br. 19) concedes that "the opinion of the Court [in *Jones v. Wolf*] indicates that the doctrine of judicial deference to a hierarchical organization's internal authority remains a constitutionally acceptable, alternative mode of decision." (Adams & Hanlon, *Jones v. Wolf: Church Autonomy and The Religion Clauses of the First Amendment* (1980) 128 U.Pa. L.Rev. 1291, 1296.)

3. The broader church autonomy doctrine recognized in *Jones* remains undiminished in modern jurisprudence.

As long recognized by the United States Supreme Court, religious organizations have a constitutional right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (*Kedroff v. St. Nicholas Cathedral of Russian O. Ch.* (1952) 344 U.S. 94, 116 [735 S.Ct. 143, 97 L.Ed. 120] (*Kedroff*); see also *Serbian Orthodox Diocese, supra,* 426 U.S. at p. 710 [the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over . . . church polity and church administration" (internal quotation marks omitted)].) Indeed, the Supreme Court reaffirmed this church autonomy doctrine in *Jones*. (*Jones, supra,* 443 U.S. at p. 602.)

Nonetheless, PLC contends the church autonomy doctrine has been overruled or greatly diminished by the Supreme Court's decision in *Employment Div., Dept. of Human Res. v. Smith* (1990) 494 U.S. 872 [110 S.Ct. 1395, 108 L.Ed.2d 876] (*Smith*). (PLC Br. 28.) PLC is wrong.

First, *Smith* does not apply. It holds simply that where a state enacts a neutral law of general applicability, an individual must comply despite a religious belief to the contrary. (*Smith, supra,* 494 U.S. at p. 886.) *Smith* does not address the central question here—whether a court may refuse to enforce rules adopted, and decisions made, by a hierarchical church.

Second, no court has adopted PLC's argument. Rather, courts have continued to emphasize the church autonomy doctrine retains its vitality even after *Smith*. For example, the United States Court of Appeals for the District of Columbia Circuit, after noting the "long line of Supreme Court cases that affirm the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine,'" concluded "we cannot believe that the Supreme Court in *Smith* intended to qualify this century-old affirmation of a church's sovereignty over its own affairs." (*E.E.O.C. v. Catholic University of America* (D.C. Cir. 1996) 83 F.3d 455, 462-463; see also *Bryce v. Episcopal Church in Diocese of Colorado* (10th Cir. 2002) 289 F.3d 648, 655-656 ["This church autonomy doctrine prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity.... [¶] ... The church autonomy line of cases begins with *Watson v. Jones* ... in which the Court declined to intervene in a property dispute between two factions of a church. ... [¶] ... [¶] The Supreme Court's decision in *Employment Division v. Smith* ... does not undermine the principles of the church autonomy doctrine"]; *Gellington v. Christian Methodist Episcopal Church* (11th Cir. 2000) 203 F.3d 1299, 1304 [*Smith* does not alter the "long-standing tradition that churches are to be free from government interference in matters of church governance and administration."]; *Combs v. Cen. Tx. Ann. Conf. United Methodist Church* (5th Cir. 1999) 173 F.3d 343, 349 ["We concur wholeheartedly with the D.C. Circuit's conclusion that *Smith*, which concerned individual free

exercise, did not purport to overturn a century of precedent protecting the church against governmental interference . . ."].)

Likewise, this court recently provided its own detailed explanation of the "modern formulation" of the church autonomy doctrine in the context of church property disputes, noting that *Watson* is still good law after *Smith*:

> "[W]henever . . . questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." [*Watson, supra,* 80 U.S.] at p. 727.) The rule's modern formulation is similar. (*Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. 696, 709.)
>
> The high court in *Watson, supra,* 80 U.S. 679, offered two reasons for deferring to religious authorities on religious questions. The first justification was that civil courts are simply "incompetent" to decide matters of faith and doctrine. (*Id.*, at p. 732.) Courts have no expertise in religious matters, and courts "so unwise" as to attempt to decide them "would only involve themselves in a sea of uncertainty and doubt . . . ." (*Ibid.*; see also *Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. 696, 714-715 & fn. 8.) The second reason was that the members of a church, by joining, implicitly consent to the church's governance in religious matters; for civil courts to review the church's judgments would "deprive these bodies of the right of construing their own church laws" (*Watson,* at pp. 733-734; see also *id.*, at pp. 728-729) and, thus, impair the right to form voluntary religious organizations (*id.*, at pp. 728-729; cf. *Serbian Orthodox Diocese v. Milivojevich, supra,* at pp. 724-725).

Catholic Charities of Sacramento, Inc. v. Superior Court (2004) 32 Cal.4th 527, 541-542, emphasis added (*Catholic Charities*).)[5/]

C. The principle of government approach does not award an unconstitutional preference to hierarchical religious organizations.

PLC and Iglesia argue that application of the principle of government approach violates the Establishment Clause. (See, e.g., PLC Br. 7-8.) As we now explain, this argument fails because the principle of government approach is consistent with how courts treat similarly situated secular voluntary associations and charitable trusts. As further shown below, the approach also produces a result consistent with the parties' expectations.

5/ *Catholic Charities* also noted that *Watson*'s holding is compelled by the First Amendment. (*Catholic Charities, supra,* 32 Cal.4th at p. 542.)

1. **The principle of government approach is consistent with how courts treat similarly situated secular voluntary associations.**

   a. **Under the established rationale of abstention, California courts routinely defer to the internal rules and decisions of hierarchical, secular voluntary associations.**

Under established common law principles, California courts defer to decisions made by private secular voluntary associations and enforce their constitutions and bylaws as interpreted by those associations. Religious organizations should receive no worse treatment.

First, the constitution and rules of a private secular voluntary association constitute a contract between the association and its members, and the law assumes members have voluntarily submitted themselves to the association's constitution and rules. (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353 (*California Dental Assn.*) ["[T]he rights and duties of the members as between themselves and in their relation to [a private voluntary] association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of [its] constitution and by-laws' "]; *Stoica v. International etc. Employees* (1947) 78 Cal.App.2d 533, 535-536 [""'"The constitution, rules and by-laws of a voluntary unincorporated

association constitute a contract between the association and its members"'" (quoting *Dingwall v. Amalgamated Assn. etc.* (1906) 4 Cal.App. 565, 569)]; *Josich v. Austrian Ben. Soc. etc.* (1897) 119 Cal. 74, 77 ["Persons who contemplate becoming members of a society like the respondent should understand that their rights as such members, will as a general rule, be determined by those with whom they thus voluntarily associate themselves," and "'they have voluntarily submitted themselves to the disciplinary power of the body of which they are members, and it is for the society to know its own'"].)

Second, California courts defer to the decisions and rules of private secular voluntary associations to avoid becoming entangled in such internal matters for which courts lack competence. (*California Dental Assn., supra,* 23 Cal.3d at p. 353 [Courts' "determination not to intervene reflects their judgment that the resulting burdens on the judiciary outweigh the interests of the parties at stake. One concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of private organizations may lead the courts into what Professor Chafee called the 'dismal swamp'"]; *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 645-646 (*Oakland Raiders*) ["We observe that the rationale of abstention from intra-association disputes applies with particular force in this instance. Given the unique and specialized nature of this association's business—the operation of a professional football league—there is significant danger that judicial intervention in such disputes will have the undesired and unintended effect of interfering with the League's

autonomy in matters where the NFL and its commissioner have much greater competence and understanding than the courts"];[6/] *California Trial Lawyers Assn. v. Superior Court* (1986) 187 Cal.App.3d 575, 580 ["This reluctance to intervene in internecine controversies, the resolution of which requires that an association's constitution, bylaws, or rules be construed, is premised on the principle that the judiciary should generally accede to any interpretation by an independent voluntary organization of its own rules which is not unreasonable or arbitrary"].)

Third, California courts defer to the rules and decisions of private secular voluntary associations to preserve their organizational autonomy. (*California Dental Assn., supra,* 23 Cal.3d at p. 353 [emphasizing courts' concern "with preserving the autonomy of such organizations"]; *Oakland Raiders, supra,* 131 Cal.App.4th at pp. 645-646 [declining judicial intervention in order to avoid "the undesired and unintended affect of interfering with the League's autonomy"]; *Berke v. Tri Realtors* (1989) 208 Cal.App.3d 463, 469 ["Courts must guard against unduly interfering with an organization's autonomy by substituting judicial judgment for that of the organization . . . . The practical and reasonable construction of the constitution and bylaws of a voluntary organization by its governing body is binding on the membership and will be recognized by the courts" (citations omitted)].)

6/ The NFL is perhaps an apt analogy, as many would consider professional football to be its own religion.

Religious organizations should receive no less deference to their bylaws and decisions in similar intra-church disputes. Here, St. James became a parish of the Episcopal Church only after promising to be forever bound by the Church's Constitutions and Canons. (ABOM 16-18.) This court should not interfere in an intra-church affair, but rather defer to the Church's Constitutions, Canons and decisions. Canon I.7(4) has addressed the question of control over parish property. That determination is binding for these purposes.

b. California courts routinely enforce the property rules of hierarchical, secular voluntary associations.

Just as California courts defer to the decisions and internal rules of a private secular voluntary association, they also enforce a superior organization's dictates regarding property held by subordinate chapters or members.

"'When a schism has occurred in a...benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, by the investment of dues collected from its members while harmony obtained, the title to the property remains in the name of the association, and that faction which has remained loyal and adhered to the laws, usages, and customs of the general organization constitutes

the true association, and is alone entitled to the use and enjoyment of the association's property. This rule applies whether the subordinate association be a corporation or simply a voluntary association, and regardless of whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages, and customs of the general organization . . . .'" (*Most Worshipful Lodge v. Sons etc. Lodge* (1953) 118 Cal.App.2d 78, 85 (*Most Worshipful Lodge*), quoting *Union Benev. Soc. No. 8 v. Martin* (1902) 113 Ky. 25 [67 S.W. 38, 39]; see also *Henry v. Cox* (1927) 25 Ohio App. 487, 491 [159 N.E. 101, 102] [relied upon by *Most Worshipful Lodge* and holding that members of a subordinate branch of the Klu Klux Klan "had a right voluntarily to . . . withdraw singly or collectively, but *they could not take with them any of the property*" of the subordinate branch (emphasis added)].)

Thatcher v. City Terrace etc. Center (1960) 181 Cal.App.2d 433 (*Thatcher*) is also instructive. There, the court upheld a parent lodge's legal interest in property held by a subordinate lodge, and rebuffed the argument that subordinate lodges are separate entities and wholly independent of their parent. "'Local lodges come into being, *not as independent organizations* existing solely for the benefit of their members, *but as constituents of the larger organization*, the grand lodge, organized for specific purposes, most of which can be accomplished only through subordinate bodies, the local lodges. . . . The property so acquired by the local lodge becomes *impressed with the group purpose* of a fraternal benefit society.'" (*Id.* at p. 453, quoting *District Grand Lodge*

No. 25 G.U. Order of O.F. v. Jones (1942) 138 Tex. 537 [160 S.W.2d 915, 921] (emphasis added); see also *Pizer v. Brown* (1955) 133 Cal.App.2d 367, 371 [court held local union was not entitled to funds or collective bargaining agreements upon seceding from its parent organization, and relied upon *Federation of Ins. Emp. v. United Office & Pro. Wkrs.* (1950) 77 R.I. 210, 215 [74 A.2d 446] where the court explained, "[t]he law governing such associations appears to be well-settled that, even if the attempt to secede was actually successful and effective, the secessionists, although constituting a majority of the members of the Local, cannot take with them the property of the Local, either into a new and independent union or into a subordinate new or existing unit of a rival parent organization"]; *Brown v. Hook* (1947) 79 Cal.App.2d 781, 784, 789, 795 (*Brown*) [after noting that "the local union is a unit in a hierarchy of organizations and that the constitution and by-laws of the union constituted a contract between International and the Lodge," court held, "[w]hile there appears to be no express provision in the constitution to the effect that a local may not withdraw or secede, the whole framework evidences that the locals and their members are so integral a part of the International that they cannot do so and still maintain their property"].)

Here, St. James received real property, and raised funds over many years, as a parish of the Church. (ABOM 16-18.) The Church's Constitutions and Canons, to which St. James voluntarily agreed to be "forever bound," provide that all such property is held in trust for the Church. (ABOM 15-16.) Like the local lodge's property in *Thatcher*, the

parish property has "become impressed with the [Church's] group purpose" by virtue of St. James' decades-long affiliation and agreement to be bound by the Constitutions and Canons. Just as California courts honor the legal interest of a superior secular organization in property held by a subordinate body, the court must also honor the Church's legal interest in parish property as established in the Constitutions and Canons.

c. California courts routinely enforce, as to all members of a private secular voluntary association, amendments to the superior body's constitution and rules.

Under ordinary principles applicable to secular voluntary associations, an organization's rules are binding on all members regardless of when they were enacted. (See, e.g., *Gear v. Webster* (1968) 258 Cal.App.2d 57, 61-62 ["'This relation [between a voluntary association and its members] is to be determined, however, by a consideration of the entire body of the rules governing the association, and is not limited to those existing at the time the individual became a member. Unless the rules at that time placed a limitation upon the power of the association to make any change or amendment therein, any amendment or change adopted in accordance with the mode provided by the association therefor is binding upon each of the members'" (quoting *Lawson v. Hewell* (1897) 118 Cal. 613, 621) (*Lawson*)];

see also *Grand Grove etc. v. Garibaldi Grove* (1900) 130 Cal. 116, 119-120 [Voluntary associations are vested with the right of expulsion "by the agreement of the members as expressed in the charter, constitution, and by-laws of the association. *To these and to legislation subsequently to be enacted, every member assents in joining the association*" (emphasis added)]; *American Society of Composers, Authors & Publishers v. Superior Court* (1962) 207 Cal.App.2d 676, 689-690 [member's rights with respect to royalties "determined by the contract in effect at the time he terminated his membership," i.e., the amended articles]; *East-West Dairymen's Assn. v. Dias* (1943) 59 Cal.App.2d 437, 441 ["An agreement by a member of a cooperative organization to be bound by its by-laws and subsequent amendments thereto is a valid provision and such member is bound by all reasonable amendments to the by-laws that may be *thereafter* adopted" (emphasis added)].)

This court has recognized the serious problems which would arise if courts were allowed to pick and choose which rules and amendments should be enforced as between a voluntary association and its members. "Courts have no standard by which to determine the propriety of the rule, and are not competent to exercise any function in the matter. 'The duly chosen and authorized representatives of the members alone are vested with the power of determining whether a change is demanded, and with their discretion courts cannot interfere. Were it otherwise, courts would control all benevolent associations, all corporations, and all fraternities.'" (*Lawson, supra,* 118 Cal. at p. 620,

quoting *Supreme Lodge, K. of P. of the World v. Knight* (1889) 117 Ind. 489 [20 N.E. 479].)

This long-standing legal standard ensures an association's rules will apply uniformly to all of its members regardless of when they affiliated. The Episcopal Church, for example, could not function (and chaos would result) if each of its approximately 7,600 member parishes were subject to separate provisions of the Constitutions and Canons depending upon when each parish was organized or acquired property. Like any other association, all Episcopal parishes are bound by the same set of rules as amended from time to time through the Church's representative process. (ABOM 9-12.)

Here, Canon I.7(4) was added to the Episcopal Church Canons more than 25 years before this dispute arose in accordance with established procedures for amending the Canons. (ABOM 10-11, 15.) Nobody forced St. James to become an Episcopal parish, but once it voluntarily chose to do so, it became bound by the Constitutions and Canons, including provisions spelling out how those instruments are amended. These provisions were no secret—they were well known, and assented to, by each parish before joining the Church.

By enforcing a hierarchical church's trust provision with respect to a subordinate local church, the Court of Appeal appropriately followed long-standing California law applicable to all private secular voluntary associations as described above. (ABOM 35-37.) It is worth noting—*none of the amici curiae supporting defendants' position address California law applicable to private secular voluntary associations, let alone*

make any attempt to explain why such legal principles do not compel the result reached by the Court of Appeal.

d. Treating religious associations less favorably than other private secular voluntary associations would be unconstitutional.

Refusing to enforce a hierarchical church's governing instruments, while doing so for non-religious private associations, would itself be unconstitutional because religious associations would be treated less favorably than other similarly situated private organizations. (See, e.g., *Owens v. City of Signal Hill* (1984) 154 Cal.App.3d 123, 128; *City of New Orleans v. Dukes* (1976) 427 U.S. 297, 303 [96 S.Ct. 2513, 49 L.Ed.2d 511].) Indeed, under amici curiae's position, the court would in effect hold that members of religious organizations, unlike members of other private organizations, may not govern themselves. This cannot be the law.

2. Enforcement of Canon 1.7(4) under the principle of government approach is consistent with generally applicable law concerning charitable trusts.

Amici curiae assert the principle of government approach is unconstitutional because it does not follow general principles of trust

law. (E.g., PLC Br. 9-11.) In making this argument, however, they focus too narrowly on the law applicable to private, single-settlor trusts, rather than charitable trusts. As we now explain, applying the principle of government approach here is consistent with California common law governing charitable trusts.

Here, St. James' Articles of Incorporation state it was formed for the explicit purpose, "To establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles in the branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America," forever held under the "Ecclesiastical authority of the Bishop of Los Angeles" in conformity with the Constitutions and Canons of the Episcopal Church. (6 AA 1119, 1134-1135.) Generations of faithful Episcopalians donated money to St. James based on this expressed purpose—that of being an Episcopal parish. Under California law on charitable trusts, St. James' property cannot be diverted from this declared purpose.

"[A]ssets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the declaration of corporate purposes," and may not be diverted to other uses, charitable or otherwise. (*American Center for Education, Inc. v. Cavnar* (1978) 80 Cal.App.3d 476, 486; see also *Brown v. Memorial National Home Foundation* (1958) 162 Cal.App.2d 513, 521 ["[A]ll the assets of a corporation organized solely for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes . . . . In other words, the

acceptance of such assets under these circumstances establishes a charitable trust for the declared corporate purposes as effectively as though the assets had been accepted from a donor who had expressly provided in the instrument evidencing the gift that it was to be held in trust solely for such charitable purposes" (quoting *Pacific Home v. County of Los Angeles* (1953) 41 Cal.App.2d 844, 852)].)

There is no suggestion in any case law that the assets of such trusts are presumed transferable to some other charitable or corporate purpose by the corporation's current leadership or that these trusts may be revoked. To the contrary, "California has expressed a strong public policy that trust property of a nonprofit religious or charitable corporation be not diverted from its declared purpose," and that such property may only be used "to carry out the objects for which the [corporation] was created." (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 857 (*Metropolitan Baptist*), quoting *Lynch v. Spilman* (1967) 67 Cal.2d 251, 260, internal quotation marks omitted; see also *In re L.A. County Pioneer Society* (1953) 40 Cal.2d 852, 856, 858-861 [imposing charitable trust on assets of nonprofit historical society based on the mission declared in its articles of incorporation and course of conduct]; *Blocker v. State* (Tex.Ct.App. 1986) 718 S.W.2d 409, 415 ["[P]roperty transferred unconditionally to a [charitable] corporation . . . is . . . subject to implicit charitable . . . limitations defined by the donee's organizational purpose . . . ." (emphasis omitted)].)

Baker v. Ducker (1889) 79 Cal. 365, 374, is instructive in applying this principle in the church context. There, this court made clear that the majority of a church's members could not choose to divert property to another religious denomination after the property had been acquired for a different purpose. "It is thus made clear that the property in question was held by the Reformed Church in trust for its members, and the defendants, even though they constituted a majority of the members, had no right and no power to divert it to the use of another and different church organization." (*Id.*; see also *Metropolitan Baptist, supra,* 48 Cal.App.3d at pp. 854-857 [applying these principles to find that the leadership of a local Baptist church could not divert its trust property for purposes inconsistent with its stated purpose, that of being a Baptist church].)

Here, defendants chose to cease all affiliation with the Church and join another church. (ABOM 18-19.) They seek to take property dedicated exclusively for the express mission of the Church and use it for another church's mission. (*Ibid.*) By doing so, defendants have improperly diverted parish property from its declared purpose—i.e., maintaining an Episcopal parish under the ecclesiastical authority of the Diocesan Bishop. This is not condoned.

3. The principle of government approach is consistent with the parties' expectations in this case.

Iglesia argues the principle of government approach "will potentially result in a host of improprieties" because the doctrine is "inconsistent with the expectations of the parties." (Iglesia Br. 16, 18, emphases omitted.) It suggests that members of a congregation donate money for purposes of the local church, not the denomination. (*Ibid.*) Iglesia's argument is based on pure speculation as to the intent of hypothetical members of a hypothetical denomination, and, as we now explain, is flatly contradicted by the actual facts in this matter.

St. James' 55 year affiliation with the Episcopal Church refutes Iglesia's fictional argument and supports the Court of Appeal's decision:

- When it voluntarily became a parish of the Episcopal Church and Diocese, St. James promised and declared it would "be forever held under," and "be bound by," the Constitutions and Canons. (6 AA 1119, 1125-1126.)
- St. James' original Articles of Incorporation state the Constitutions and Canons would "always form a part of [St. James'] By-Laws and Articles" and "shall prevail against and govern" anything to the contrary. (6 AA 1120, 1134-1135.)

- The Diocese donated the original church property to St. James only after it promised to be forever bound by the Constitutions and Canons. (6 AA 1119.)
- St. James understood that, when its property was "consecrated" under the Constitutions and Canons, it became dedicated exclusively for worship "in accordance with the doctrine and discipline of the Church." (5 AA 984-985, 987-988.)
- St. James continued accepting the benefits of being a parish in the Episcopal Church and Diocese for more than 25 years after the Church's adoption of an explicit trust provision, Canon I.7(4). (5 AA 986; 6 AA 1120-1122.)
- As recently as 1991, St. James amended its Articles, retaining the provisions incorporating the Constitutions and Canons. (6 AA 1120.)

On this record, the only way in which to sustain the parties' expectations is to enforce the Church Canons and find that the property is held in trust for the Church.

D. The principle of government approach does not unconstitutionally favor hierarchical over congregational religious denominations.

Amici curiae assert the principle of government approach "would unconstitutionally favor religious organizations with multiple tiers." (PLC Br. 23.) Not so.

The principle of government approach affords equal treatment to each form of church organization by respecting the governance structure adopted and agreed upon by the members of the organization, and by deferring to decisions made by the appropriate authority within such structure. (See typed opn., 11 ["But we hasten to add that the 'hierarchy' description is a technical misnomer. As the passage just quoted about majority rule shows, *Watson's* 'principle of government' is in point of fact neutral toward any kind of church organization. It simply makes the decision turn upon the structure of governmental organization in a church, as distinct from some other criterion."]; *Vann v. Guildfield Missionary Baptist Church* (W.D.Va. 2006) 452 F.Supp.2d 651, 655 ["As a preliminary matter, Guildfield is a congregational church. Thus, it is governed by the will of the majority, to the extent it has not adopted other rules through majority vote. [Citations.] In contrast, a hierarchical church is governed by a religious tribunal or other leader. [Citations.] Decisions of both bodies are equally immune from judicial review"].) By contrast, amici curiae's argument would require courts to substitute judicial determinations for decisions made by a church's governing body. This would result in an unconstitutional entanglement with religion.

E. The judicial determination of whether a church is hierarchical does not cause unconstitutional entanglement in religious issues.

PLC and Iglesia contend the principle of government approach is unconstitutional because it requires courts to determine whether a particular religious organization is hierarchical. (PLC Br. 17; Iglesia Br. 12-13.) This argument lacks merit for three reasons: 1) courts routinely determine whether the rules and decisions of a superior entity govern subordinate bodies; 2) there is no dispute in this case—the Episcopal Church is unquestionably hierarchical; and 3) the neutral principles approach would not alleviate the burden on courts to determine the organizational structure of religious entities.

Contrary to amici curiae's arguments, courts have demonstrated their competence in determining whether a particular organization, either secular or religious, is hierarchical in nature. (See, e.g., *U.S. v. International Broth. of Teamsters* (2d Cir. 1992) 968 F.2d 1506, 1511 [distinguishing between affiliates "whose authority is derived from their hierarchical association with the international union" and other locals which are "independent entities"]; *Michigan State AFL-CIO v. Employment Relations Commission* (Mich. 1996) 551 N.W.2d 165, 182 [noting the hierarchical structure of union organization—"when the individual bargaining unit members choose to associate with the statewide or the larger association, these people willingly relinquish the right to assert . . . what is best for the individual bargaining unit"];

Dixon v. Edwards (D.Md. 2001) 172 F.Supp.2d 702, 715, affd. in part and remanded in part (4th Cir. 2002) 290 F.3d 699 (*Dixon*) [determining that church structure is hierarchical]; *Church of God in Christ, Inc. v. Graham* (8th Cir. 1995) 54 F.3d 522, 527 (*Church of God in Christ*) [analyzing the relationship between denomination and congregation, and finding that congregation is not part of hierarchical institution]; *Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1409-1410 (*Concord Christian*) [reviewing church's history, governing documents and structure to determine whether local church is subordinate member of hierarchical church].)

Moreover, courts have made this determination in the church context without accepting every "assertion" of hierarchy (PLC Br. 23) or becoming entangled in religious issues. (See, e.g., *Dixon v. Edwards* (4th Cir. 2002) 290 F.3d 699, 715 [applying five objective elements to determine that Episcopal Church is hierarchical]; *Kendysh v. Holy Spirit B.A.O.C.* (E.D.Mich. 1987) 683 F.Supp. 1501, 1510 [examining "'lines of church authority as they existed just before the dispute impaired them'" to determine whether hierarchical control existed]; *Skelton v. Word Chapel, Inc.* (Ariz.Ct.App. 1981) 637 P.2d 753, 756 [noting its use of objective criteria to determine hierarchical nature of religious body].)

In any event, amici curiae's single-minded focus on the supposed difficulties of characterizing different religious organizations is purely hypothetical as it pertains here—the Episcopal Church is undisputedly hierarchical. (ABOM 9-16; see, e.g., *Dixon, supra,* 172 F.Supp.2d at p. 715 ["Courts have repeatedly and invariably recognized that the

[Episcopal] Church is hierarchical. Indeed, there appears to be no case to the contrary and Defendants have noted none"]; *Parish of the Advent v. Protestant Episcopal Diocese of Mass.* (1997) 426 Mass. 268, 281-282 [688 N.E.2d 923, 931-932] ["[T]he Protestant Episcopal Church is hierarchical. The constitution and canons of [the Episcopal Church] detail the authority exercised by [the Episcopal Church] through a diocese to each local parish. . . . [¶] . . . The United States Supreme Court and the highest courts in other States have reached the same view. . . . To our knowledge there are no judicial holdings to the contrary"].)[7/] While San Joaquin attempts to create an issue on this point by submitting a non-party declaration, the determination of whether the Episcopal Church is hierarchical, even if it had been disputed by the parties below, must be based on the relevant case law and the record before the court.[8/]

7/ If, in a future case, unlike here, "identification of the relevant church governing body is impossible without immersion in doctrinal issues or extensive inquiry into church polity," the court could elect to apply the neutral principles approach in that particular case. (See *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* (1970) 396 U.S. 367, 370 & fn. 4 [90 S.Ct. 499, 24 L.Ed.2d 582](*Sharpsburg*).)

8/ This court should not consider the new evidence submitted by San Joaquin. San Joaquin cites *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405 (*Bily*) for the proposition that its declaration should not be subject to a motion to strike. (San Joaquin Br. 13.) *Bily* further held, however, that this court would "ignore improper material" from amici curiae such as declarations which "are not part of the record, were not subjected to the testing mechanisms of the adversary process . . . [and] pertain to matters irrelevant to the legal rules and standards

Finally, amici curiae ignore the obvious point that even where courts apply neutral principles, they often are required nevertheless to determine whether the religious organization is hierarchical. *Jones* emphasized that, even under the neutral principles approach, the First Amendment "requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." (*Jones, supra,* 443 U.S. at p. 602.) Thus, application of neutral principles does not lessen the courts' charge of determining the organizational structure of religious organizations. (See, e.g., *Concord Christian, supra,* 132 Cal.App.4th at p. 1409 [applying neutral principles but determining, as a preliminary issue, whether church is hierarchical or congregational]; *Church of God in Christ, supra,* 54 F.3d at pp. 526-527 [applying neutral principles approach, but still addressing the "threshold inquiry" of whether the local congregation was part of a hierarchical institution]; *Marsaw v. Richards* (2006) 308 Ill.App.3d 418, 424 [857 N.E.2d 794, 802] [applying neutral principles but still reaching issue of whether "church's governing documents reflect a congregational organization rather than a hierarchical one"]; see also, Belzer, *Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils* (1998) 11 St. Thomas L.Rev. 109, 136 (hereafter Belzer) ["in addition to creating its own risky inquiries, neutral principles fails to alleviate the problems associated with the

---

we consider in this case." (*Bily,* at p. 406, fn. 14.) Moreover, the record below demonstrates unquestionably that the Episcopal Church is hierarchical. (ABOM 9-16; 5 AA 980-992.)

deference approach" because courts must still determine whether the organization is hierarchical (fn. omitted)].)

F. The neutral principles approach risks unconstitutional interference and intrusion into religious issues.

Amici curiae fail to recognize that the neutral principles approach produces its own intractable constitutional problems. It requires courts "to examine the documents that govern the local and general church. . . . [T]his initial inquiry into ecclesiastical documents carries with it inherent dangers of entangling the courts in religious issues." (Belzer, *supra,* 11 St. Thomas L.Rev. at pp. 126-127.) The neutral principles approach does not "'clearly define the limits of [judicial] intrusion'" into the meaning of church documents, thereby inviting "'risky inquiries and unwitting entanglements [that] can plague a court [seeking] to separate the secular wheat from the religious chaff.'" (*Id.* at p. 127.) The real life application of the neutral principles approach over the past three decades has vindicated the four dissenting justices' prediction in *Jones*. "[T]his new approach inevitably will increase the involvement of civil courts in church controversies." (*Jones, supra,* 443 U.S. at p. 611 (dis. opn. of Powell, J.).)[9/]

9/ Given that *Jones* permits each State to choose between neutral principles or the principle of government approach, this court may properly consider the cogent analysis of the four dissenting justices in determining which approach should be applied in California.

In addition, the neutral principles approach has produced such inconsistent conclusions that the only "predictable result is confusion and uncertainty." (Fennelly, *Property Disputes and Religious Schisms: Who is the Church?* (1997) 9 St. Thomas L.Rev. 319, 353.) "[I]t is these inconsistent and unpredictable results that both offend Free Exercise rights and negate some of neutral principles' supposed advantages." (Belzer, *supra,* 11 St. Thomas L.Rev. at p. 131; compare *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599 with *Korean United Presbyterian Church v. Presbytery of The Pacific* (1991) 230 Cal.App.3d 480 (*Korean United*) and *Guardian Angel Polish Nat. Catholic Church of L. A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919.) Again, the *Jones* dissent forecasted this unacceptable consequence. "Attempting to read [the constitutional documents of churches] 'in purely secular terms' is more likely to promote confusion than understanding." (*Jones, supra,* 443 U.S. at p. 612 (dis. opn. of Powell, J.).)

The neutral principles approach also fails to give sufficient weight to the religious significance of property in carrying out a church's mission. Within the Episcopal Church, local church property is consecrated by the Diocesan Bishop in a religious ceremony and dedicated exclusively for the mission of the Church. (ABOM 7, 14-15; 4 AA 806.) The Church's decisions on the use of property represent resolutions on core issues of religious doctrine and polity to which a court must defer. (See *Jones, supra,* 443 U.S. at 616 (dis. opn. of Powell, J.) ["Disputes among church members over the control of church property arise almost invariably out of disagreements regarding

doctrine and practice"]; *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 713 (*East Bay*) [Any significant burden on use of property "could affect the ability of many owners to carry out their religious missions"].) If this court were to conclude, contrary to the Church's stated mission and its property-related Canons, that parish property nevertheless can be taken to a different church for a different religious purpose, the court would unconstitutionally assert itself into a dispute over religious doctrine and polity.

III.

CORPORATIONS CODE SECTION 9142 REMAINS DISPOSITIVE IN PLAINTIFFS' FAVOR UNDER EITHER THE PRINCIPLE OF GOVERNMENT OR NEUTRAL PRINCIPLES APPROACH.

Based on the facts of this case, the court need not decide whether the principle of government or neutral principles approach is appropriate. Rather, it can, and should, simply apply the plain language of Corporations Code section 9142 which provides that assets of a local religious corporation are held in trust for a denomination if "the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide." (Corp. Code, § 9142, subd. (c)(2).) It is just that simple.

A. The plain language of section 9142 establishes a trust in plaintiffs' favor.

In accordance with section 9142, the Church's "governing instruments" expressly impose a trust on parish property. Canon I.7(4) was enacted by "a superior religious body or general church," is embedded in the "governing instruments" of the Church, and expressly provides for such a trust. (See 5 AA 984-987.) Nothing more is required. The statute further provides that such trusts may only be dissolved by amendment to those same "governing instruments creating the trusts." (Corp. Code, § 9142, subd. (d).)

PLC suggests the court should graft additional language onto section 9142 to require that a local church execute an "operative document" before a denominational trust provision can be enforced. (PLC Br. 39, 43.) This would violate the plain language of the statute. (*Green v. State of California* (2007) 42 Cal.4th 254, 260 ["The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent"]; *People v. Loeun* (1997) 17 Cal.4th 1, 9 (*Loeun*) [""'Where the statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist'""].) Section 9142 could not be more clear.

Section 9142, subdivision (c)(2), provides a trust is created by *either one* of two alternative methods: (i) by provision in the articles or

bylaws of the [local church] *or* (ii) by provision in the "governing instruments of a superior religious body or general church of which the corporation is a member." (Corp. Code, § 9142, subd. (c)(2).) By using "or" rather than "and" in subdivision (c)(2), the Legislature clearly indicated an enforceable trust may be created solely by provision in the governing instruments of a superior religious body—no other "operative document" executed by a local church is required. (*Loeun, supra,* 17 Cal.4th at p. 9 ["The Legislature's use of the disjunctive 'or' . . . indicates an intent to designate alternative ways of satisfying the statutory requirements"].)

B. Section 9142, as applied by the court of appeal, is not unconstitutional.

Amici curiae contend section 9142, as applied by the Court of Appeal, violates the Establishment Clause because it "'impermissibl[y] advance[s] a particular religious practice'" by giving "special property rights to hierarchical churches because of both their religious nature and their choice of a hierarchical structure." (PLC Br. 40.) PLC is wrong.

1. Section 9142 is consistent with *Jones* as well as generally applicable law.

Amici curiae's characterization of section 9142 as constitutionally infirm cannot be squared with *Jones*. Enforcement of Canon I.7(4) in this case is precisely the result envisioned in *Jones*—that the "constitution of the general church can be made to recite an *express* trust in favor of the denominational church." (*Jones, supra,* 443 U.S. at p. 606, emphasis added.) Nothing in *Jones* suggests a general church's constitution must be amended in any extraordinary fashion to be enforceable by civil courts. Thus, section 9142 responds to *Jones'* invitation that "the State *may adopt any method* of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy." (*Id.* at p. 608, emphasis added.) Section 9142 does neither.

Moreover, as noted above, enforcement of Canon I.7(4) is consistent with California law applicable to private secular voluntary associations and charitable trusts. (See *ante*, pp. 17-30.) Therefore, section 9142 does not provide special rights solely to hierarchical religious organizations.

2. The United States Supreme Court has recognized legislation may accommodate religious practices without violating the Establishment Clause.

Even if section 9142 were construed as treating religious organizations differently than non-religious organizations (it does not), the United States Supreme Court has long recognized "'the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.'" (*Corporation of Presiding Bishop v. Amos* (1987) 483 U.S. 327, 334 [107 S.Ct. 2862, 97 L.Ed.2d 273] (*Amos*).) In upholding Title VII's exemption for religious organizations, the court held, "[I]t is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." (*Id.* at p. 335.)

Amos rejected the argument that the exemption in Title VII was broader than required by the Free Exercise Clause because it extended to both religious and secular activities of religious organizations. (*Amos, supra,* 483 U.S. at p. 336 ["We may assume for the sake of argument that the pre-1972 exemption was adequate in the sense that the Free Exercise Clause required no more. Nonetheless, it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious"].) The court also found unpersuasive the lower court's "reliance on the fact that [the statutory exemption] singles out

religious entities for a benefit," noting that, "Although the Court has given weight to this consideration in its past decisions, [citation] it has never indicated that statutes that give special consideration to religious groups are *per se* invalid. That would run contrary to the teaching of our cases that there is ample room for accommodation of religion under the Establishment Clause." (*Id.* at p. 338.)

Significantly, *Amos* upheld the statutory exemption for religious organizations even though the exemption "necessarily has the effect of burdening the religious liberty of prospective and current employees. . . . The potential for coercion created by such a provision is in serious tension with our commitment to individual freedom of conscience in matters of religious belief." (*Amos, supra,* at pp. 340-341 (conc. opn. of Brennan, J.).) This potential burden on the religious liberty of individuals, however, was outweighed by the recognition that "religious organizations have an interest in autonomy in ordering their internal affairs," and "[s]olicitude for a church's ability to do so reflects the idea that furtherance of the autonomy of religious organizations often furthers individual religious freedom as well." (*Id.* at pp. 341-342.) In short, "[i]f religious communities are not able to teach, develop, and live out their ideas free from state interference, individual belief will also be suppressed." (Brady, *Religious Organizations and Free Exercise: The Surprising Lessons of Smith* (2004) 2004 B.Y.U. L.Rev. 1633, 1677 (hereafter Brady).)

Smith, a case relied upon by amici curiae, also does not aid defendants. In *Smith,* the United States Supreme Court, while holding

that the Free Exercise Clause does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability, emphasized that *legislatures* may create religion-based exemptions to generally applicable laws. (*Smith, supra,* 494 U.S. at p. 890.) "[T]he Court did not hold that believers and nonbelievers must always be treated alike. To the contrary, the Court permits and, indeed, encourages legislatures to make special accommodations when religious practice is burdened. Smith does not reject all special or favorable treatment of religion. Indeed, it expects and approves of such favoritism." (Brady, *supra,* 2004 B.Y.U. L.Rev. at pp. 1678-1679.) In fact, the "Smith Court points to and approves of the frequency of reasonable legislative accommodations." (*Id.* at p. 1674.)[10/] "*[L]egislatively* created religious exemptions are permissible if the legislative body has reason to believe that the law may impose a burden on free exercise." (*East Bay, supra,* 24 Cal.4th at p. 711, original emphasis.)

10/ See also, Note, *Reformulating Church Autonomy: How Employment Division v. Smith Provides a Framework for Fixing the Neutral Principles Approach* (2007) 82 Notre Dame L.Rev. 1679, 1721, 1723 ("Smith declared that legislatures, not courts, should create individual-based exemptions to generally applicable laws.... [G]iving legislatures, and not courts, the responsibility to create these religious-based exemptions correctly acknowledges that legislatures are better equipped to determine the proper scope of these protections"); Volokh, *A Common-Law Model for Religious Exemptions* (1999) 46 UCLA L.Rev. 1465, 1468 ("The Free Exercise Clause, [*Smith*] held, does not require exemptions; whether an exemption is available should be up to the legislature").

Finally, any doubt about the constitutionality of section 9142 should be removed by Justice Brennan's concurring opinion in *Sharpsburg*, which is relied upon by amici curiae. (PLC Br. 26.) Justice Brennan, after noting that States may adopt the principle of government approach of *Watson* or the neutral principles approach for resolving litigation over religious property, then added: "*A third possible approach* is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical policy, as well as doctrine, to church governing bodies." (*Sharpsburg, supra*, 396 U.S. at p. 370, emphasis added.) Section 9142 is precisely the type of statute envisioned by *Sharpsburg*.[11/]

3. This court has also held that state statutes may make special accommodations for religious organizations.

This court has also agreed that legislatures can make special accommodations for religious organizations. "Such legislative accommodations would be impossible as a practical matter if the government were . . . forbidden to distinguish between the religious

---

11/ See *Culver, supra*, 627 N.W.2d at pp. 476, 479 (enforcing state statute which specifically accommodates Methodist hierarchical structure and property management through system of trusts, and rejecting argument that plain language of statute should not be enforced in order to avoid alleged constitutional problems).

entities and activities that are entitled to accommodation and the secular entities and activities that are not. In fact, Congress and the state legislatures have drawn such distinctions for this purpose, and laws embodying such distinction have passed constitutional muster." (*Catholic Charities, supra,* 32 Cal.4th at p. 545.) "It is well-established, too, that '[t]he limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause.'" (*East Bay, supra,* 24 Cal.4th at p. 706, quoting *Walz v. Tax Commission of City of New York* (1970) 397 U.S. 664, 673 [90 S.Ct. 1409, 25 L.Ed.2d 697].) "Between intrusion prohibited by the free exercise clause and assistance prohibited by the establishment clause, the state must have room to maneuver." (*East Bay,* at p. 711.) Thus, this court has upheld state laws which exempt religious organizations from historic landmark preservation laws and laws requiring insurance plans to cover the cost of contraceptives. (*Id.* at p. 714; *Catholic Charities,* at pp. 547, 550.)

East Bay and *Catholic Charities* are instructive in several respects. First, both cases involved more problematic statutory exemptions than any exemption which amici curiae could possibly discern in section 9142.

Second, the plaintiffs in *East Bay* and *Catholic Charities,* just as amici curiae, described a parade of constitutional horribles which might arise in hypothetical future cases. This court expressed little patience with such arguments. (*Catholic Charities, supra,* 32 Cal.4th at p. 547 ["Consequently, no entangling inquiry into Catholic Charities'

purpose or beliefs, or the beliefs of its employees and clients, has occurred or is likely to occur. Therefore, even if in some other case the statute might require an entangling inquiry, in this case, as applied to Catholic Charities, the establishment clause offers no basis for holding the statute unconstitutional."]; *East Bay, supra,* 24 Cal.4th at p. 709 ["Therefore we apply the well-established rule that *a statute will not be deemed facially invalid on constitutional grounds unless its provisions present a total and fatal conflict with applicable constitutional prohibitions, in all of its applications*" (internal quotation marks omitted, emphasis added).)

Third, if amici curiae's Establishment Clause theory were accepted, numerous other statutory exemptions would have to be declared unconstitutional. (*Catholic Charities, supra,* 32 Cal. 4th at p. 552 ["A rule barring religious references in statutes intended to relieve burdens on religious exercise would invalidate a large number of statutes"].) As one example, California's Fair Employment and Housing Act would also be unconstitutional because it exempts religious organizations from a general law prohibiting discrimination against persons based on, among other things, sexual orientation. (See Gov. Code, § 12900 et seq.) Another example is the statute which prohibits a claim for punitive or exemplary damages against a religious corporation absent a court order with requisite findings. (Code Civ. Proc., § 425.14.)

Thus, section 9142 does not violate the Establishment Clause even though it may "alleviate significant governmental interference with the ability of religious organizations" to carry out their religious

mission with the use and control of church property. (*Amos, supra,* 483 U.S. at p. 335.)

4. Section 9142 does not violate the "no preference" clause of the California Constitution.

Amici curiae further contend section 9142 somehow violates the "no preference" clause of Article I, section 4 of the California Constitution. (PLC Br. 36-37; Lee Br. 19.) This argument misses the mark for several reasons.

As explained above, enforcement of Canon I.7(4) is consistent with California law applicable to secular voluntary associations and charitable trusts. Thus, section 9142 does not award an unconstitutional preference to religious organizations.

In any event, this court has held that a statute accommodating religion which passes scrutiny under the federal Establishment Clause necessarily satisfies California's no preference clause. "Neither the history nor the language of the no-preference clause supports plaintiffs' argument that the clause bans governmental accommodation of religion or religious belief in general." (*East Bay, supra,* 24 Cal.4th at p. 720.)

IV.

PLAINTIFFS ALSO PREVAIL UNDER NEUTRAL PRINCIPLES.

Amici curiae assert that, if the court were to apply neutral principles, St. James' property would not be held in trust for the Church and its members. (Iglesia Br. 21.) Based on the clear analysis of *Jones,* amici curiae again are mistaken. Plaintiffs clearly prevail even were this court to apply neutral principles rather than the principle of government approach.

A. The church's Constitution and Canons establish an enforceable trust under neutral principles.

1. *Jones* is dispositive because Canon I.7(4) complies precisely with the United States Supreme Court's invitation.

In *Jones,* the United States Supreme Court emphasized that church canons establishing trust relationships are enforceable in civil courts under neutral principles: "*At any time before the dispute erupts, . . . the constitution of the general church can be made to recite an express trust in favor of the denominational church.*" (*Jones, supra,* 443 U.S. at p. 606, emphasis added.) In direct response to *Jones,* the Church's General Convention acted quickly to amend its Canons "to recite an

express trust in favor of the denominational church." Canon I.7(4) confirmed, *more than 25 years before the current dispute arose,* that all parish property is held in trust for the Church. At no time during the ensuing 25 years did St. James ever express any disagreement with Canon I.7(4) or make any effort to amend or modify it. (ABOM 30.) Thus, under neutral principles, the property at issue is held in trust for the Church. (See *Korean United, supra,* 230 Cal.App.3d at p. 512 ["[T]he United States Supreme Court, in *Jones, invited the very type of provision* now found in the Book of Order. Here, *the amendments adding the trust language . . . were made several years before the dispute at bench erupted"* (emphasis added)].)

2. Amici curiae's analysis requires this court to ignore *Jones*.

Faced with *Jones'* unequivocal affirmation that hierarchical churches are empowered to establish rules, such as Canon I.7(4), creating an enforceable trust on local church property, amici curiae suggest the court should modify the neutral principles set forth in *Jones*. They ask the court instead to apply "*pure* neutral principles" or "*strictly* neutral principles" by considering only formal title documents and ignoring the denomination's governing documents. (See, e.g., PLC Br. 26-27; Iglesia Br. 24-25.) This would run directly contrary to *Jones*.

Jones directs courts, in applying the neutral principles approach, to consider "the provisions in the constitution of the general church

concerning the ownership and control of church property." (*Jones, supra,* 443 U.S. at p. 603.) *Jones* further emphasizes "the constitution of the general church can be made to recite an express trust in favor of the denominational church" at any time before the dispute erupts. (*Id.* at p. 606.) Indeed, *Jones* reiterated, "Most importantly, any rule of majority representation can always be overcome, under the neutral-principles approach, *either* by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, *or by providing that the church property is held in trust for the general church and those who remain loyal to it.*" (*Id.* at pp. 607-608, emphases added.)

In the same way amici curiae asks the court to ignore the plain language of Corporations Code section 9142, they are reduced to arguing the United States Supreme Court did not really mean what it said in *Jones*. According to amici curiae, when *Jones* stated the constitution of the general church "can be made to recite an express trust" as an *alternative* to modifying the property deeds or local church's corporate charter, it did not really mean a general church's constitution could be amended in accordance with its normal rules for amendments. (PLC Br. 43; Iglesia Br. 23.) Their argument is simply inconsistent with *Jones'* explicit statement that the constitution of the general church can be amended to recite an express trust as an *alternative* to having the local church modify the property deeds or its corporate charter. (*Jones, supra,* 443 U.S. at p. 606.)

Moreover, amici curiae fail to address *Jones'* explicit approval of the Georgia Supreme Court's decision in *Carnes v. Smith* (1976) 236 Ga. 30 [222 S.E.2d 322], where the court enforced an express trust provision similar to Canon I.7(4) and awarded church property to the denominational church. (*Jones, supra,* 443 U.S. at pp. 600-601.) As *Carnes* explained, "[A local church] cannot, as here, enter a binding relationship with a parent church which has provisions of implied trust in its constitution, by-laws, rules, and other documents pertaining to the control of property, yet deny the existence of such relationship." (*Carnes,* at p. 328.)

In *Jones,* the church property was not awarded to the general church under neutral principles only because the general church's constitution did not contain a trust provision at the time the dispute arose. (*Jones, supra,* 443 U.S. at p. 601 ["And here, as in *Presbyterian Church II,* but in contrast to *Carnes,* the provisions of the constitution of the general church . . . concerning the ownership and control of property failed to reveal any language of trust in favor of the general church"].) Here, as in *Carnes* but unlike *Jones,* there was an express trust provision at the time the dispute arose which must be enforced by the courts.

B. Amici curiae's theory of neutral principles violates the first amendment because it would require the court to nullify the constitutions and canons of hierarchical religious organizations.

If the court were to adopt amici curiae's "pure" or "strict" neutral principles approach, rather than the neutral principles approach explicated in *Jones,* it would effectively nullify the hierarchical nature of the Church and the binding legal effect of its Constitutions and Canons. This would violate the Church's First Amendment right to govern and organize itself without state inference.

In *Kedroff, supra,* 344 U.S. at p. 116, the Supreme Court explained that a hierarchical church has a First Amendment right to govern and organize itself as it sees fit and that interference with that right by a state is unconstitutional. The Court emphasized there is a "freedom for religious organizations . . . in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (*Ibid.*; see also *Serbian Orthodox Diocese, supra,* 426 U.S. 696; *Jones, supra,* 443 U.S. 595.)

In *Serbian Orthodox Diocese,* the Supreme Court held that a hierarchical church has a First Amendment right to conclusively interpret its own rules, and "civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of . . . ecclesiastical rule, custom, or law." (*Serbian Orthodox Diocese, supra,* 426 U.S. at p. 713.) In *Jones,* even as it

approved neutral principles as an alternative approach, the court stressed that courts must "completely" abstain from resolving "questions of religious . . . polity[] and practice." (*Jones, supra*, 443 U.S. at p. 603.) It continued by stating that hierarchical churches could – with "minimal" effort – cement their established polity and structure through amendment of the general church's governing documents "to recite an express trust in favor of the denominational church." (*Id.* at p. 606.)

By arguing that deference to the internal rules of hierarchical church organizations interferes with the Free Exercise rights of individual church members, amici curiae miss the point of *Kedroff*. "[F]urtherance of the autonomy of religious organizations often furthers individual religious freedom as well." (*Amos, supra*, 483 U.S. at pp. 341-342 (conc. opn. of Brennan, J.) ["[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the [Free Exercise] Clause.' [Citation.] . . . For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to mere aggregation of individuals"].)

Here, the Constitutions and Canons, at both the diocesan and national levels, are adopted and amended through a representative process. (5 AA 981.) Canon I.7(4) was not a decree unilaterally imposed, but rather voted upon by elected delegates. (ABOM 15.) Every mission and parish throughout the Church participated in the vote to adopt Canon I.7(4) through representatives they elected to the House of Deputies at their various diocesan conventions. (*Ibid.*)

If California courts refused to enforce a general church's rules regarding control of local church property, as amici curiae propose, they would effectively substitute the State's rules for those established by the Church's membership and eliminate a key component of hierarchical church structure. As Justice Brennan recognized in *Amos*, such judicial infringement on the autonomy of religious organizations also unconstitutionally infringes on the individual's right to worship within a hierarchical structure.

C. The authorities relied upon by amici curiae require affirmance of the Court of Appeal's decision under neutral principles.

Amicus curiae PLC urges the court to adopt the neutral principles approach as applied "by a growing number of the most sophisticated courts in other States." (PLC Br. 2.) PLC points to, among others, New York (PLC Br. 25, 33), Pennsylvania (PLC Br. 30-31), Colorado (PLC Br. 35-36), Kentucky (PLC Br. 24), Louisiana (PLC

Br. 35), and Wisconsin (PLC Br. 36). The striking aspect about these jurisdictions, however, is that all six have enforced denominational property canons under facts nearly identical to those existing here.

In New York, courts have enforced the very canon at issue in this case, Canon I.7(4), in two separate cases. (*Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* (N.Y.Ct.App. 1999) 684 N.Y.S.2d 76, 81 ["In our view, the record supports the conclusion that the [Canon I.7(4)] amendment expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church. By accepting the principles of the Protestant Episcopal Church and the Diocese, defendants were subject to their canons, rules and practices."]; *Episcopal Diocese of Rochester v. Harnish* (Sept. 13, 2006) N.Y. Misc. Lexis 9190 [enforcing Canon I.7(4), and rejecting defendant's contention "that they cannot be bound by National Canon I.7.4 . . . because it was adopted in 1979, almost 30 years after All Saints Protestant Episcopal Church was accepted as a parish in 1947"]; see also, *North Central New York Annual Conference v. Felker* (N.Y.Ct.App. 2006) 816 N.Y.S.2d 775, 776 [enforcing similar national trust provisions of United Methodist Church].)

In Pennsylvania, its Supreme Court similarly enforced Canon I.7(4) against a local parish. (*In re Church of St. James the Less* (2005) 585 Pa. 428 [888 A.2d 795] (*St. James the Less*).) The court held the local parish "is bound by the express trust language in [Canon I.7(4)] and therefore, its vestry and members are required to use its property for

the benefit of the Diocese." (*Id.* at p. 810.) The court approved the lower court's finding that "St. James was bound by the explicit trust language in [Canon I.7(4)] as it had remained a member of the Diocese and the National Episcopal Church for twenty years following the adoption of [Canon I.7(4)]" (*id.* at p. 803), and rejected the contention that the local church "cannot be bound by the canon because it divests it of its property without its consent" (*id.* at p. 808).[12/]

The Colorado Supreme Court likewise concluded the property of a local parish is held in trust for the Episcopal Church. (*Bishop and Diocese of Colorado v. Mote* (Colo. 1986) 716 P.2d 85.) Although the dispute in *Mote* erupted before adoption of Canon I.7(4), the court nevertheless found that provisions in the pre-existing Episcopal Canons "demonstrate a unity of purpose on the part of the parish and of the general church reflecting the intent that property held by the parish would be dedicated to and utilized for the advancement of the work of [the Episcopal Church]," and "foreclose the possibility of the withdrawal of property from the parish simply because a majority of the members of the parish decide to end their association with [the Episcopal Church]." (*Id.* at p. 108.)

12/ PLC twice refers to *St. James the Less* as an example of the proper application of neutral principles. For example, it cites *St. James the Less* for this proposition: "[A] local congregation is unquestionably free to grant a religious denomination the contractual right to resolve property disputes. And it appears that some of them have." (PLC Br. 16 [citing court's finding that parish agreed not to alienate property without diocesan approval].) The identical facts and Canons exist in this case. (See, e.g., 4 AA 792.)

In *Cumberland Presbytery v. Branstetter* (Ky. 1992) 824 S.W.2d 417 (*Cumberland*), Kentucky's highest court, after a lengthy discussion of *Jones*, enforced a national trust provision in favor of the denomination. "Decisive in this case . . . is the undisputed evidence that the Cumberland Presbyterian Church through its General Assembly, Presbyteries, and local churches revised its written Constitution in 1984 (before the dispute erupted in the [local church]) . . . . (*Id.* at p. 421.) "[T]he Cumberland Presbyterian denomination followed to a T the suggestion of the U.S. Supreme Court in *Wolf* as to a method of ensuring 'that the faction loyal to the hierarchical church will retain the church property.'" (*Id.* at p. 422.)[13/]

The Louisiana Supreme Court, like the other jurisdictions above, also recognized and enforced general church provisions which limited use of local church property. (*Fluker Community Church v. Hitchens* (La. 1982) 419 So.2d 445.) Based on provisions in the national church's governing documents which prohibited transfer of local church property without the general church's consent and provided for reversion to the general church upon the disbanding of the local church, the court concluded "the presumptive rule of majority control

---

13/ *Cumberland* distinguished the court's earlier decision in *Bjorkman v. Protestant Episcopal Church* (Ky. 1988) 759 S.W.2d 583 (*Bjorkman*): "[I]n Bjorkman we had no general church constitutional pronouncement adopted before the dispute erupted, mandating expressly that all property was to be held in favor of the denominational church." (*Cumberland, supra*, 824 S.W.2d at 422). The disaffiliation in *Bjorkman* occurred prior to the Church's adoption of Canon I.7(4). (*Bjorkman, supra*, 759 S.W.2d at 586.)

of [local church property] has been overcome in favor of the hierarchical organization . . ." (*Id.* at p. 448.)

Finally, the Wisconsin Supreme Court enforced a state statute recognizing the hierarchical denomination's interest in local church property. (*Culver, supra,* 627 N.W.2d at p. 469.) The court emphasized that, even under neutral principles apart from the statute, the same result would be required. "This is in accord with the rule of other states that have addressed the attempted removal of entrusted property by a local congregation that secedes from a hierarchical church. The general rule in this regard has been expressed as follows: [¶] ['] *Although the members of a local church may secede from a hierarchical system, they cannot secede and take the church property with them.*['] " (*Id.* at p. 481, emphasis added.)

Each of these decisions, decided by the "most sophisticated courts in other States" (PLC Br. 2), leads to the inescapable conclusion that even under neutral principles, plaintiffs prevail. Moreover, as noted in plaintiffs' Answer Brief, courts in several additional states have enforced Canon I.7(4) and similar trust provisions. (ABOM 50-51.)

CONCLUSION

Amici curiae provide no basis for reversing or altering the Court of Appeal's opinion. For the reasons stated above and in plaintiffs' Answer Brief on the Merits, this court should affirm the opinion and reverse the trial court.

Dated: August 4, 2008

HOLME ROBERTS & OWEN LLP
JOHN R. SHINER

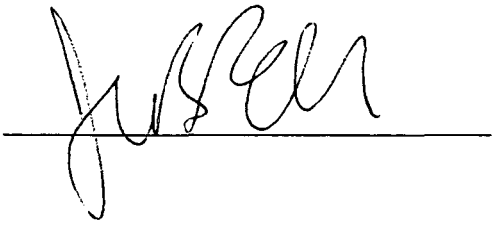
HORVITZ & LEVY LLP
FREDERIC D. COHEN
JEREMY B. ROSEN

Attorneys for
Plaintiffs and Respondents
JANE HYDE RASMUSSEN; THE RIGHT REV. ROBERT M. ANDERSON; THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES; THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)

The text of this brief consists of 13,840 words as counted by the Corel WordPerfect version 10 word-processing program used to generate the brief.

DATED: August 4, 2008



PROOF OF SERVICE [C.C.P. § 1013a]

I, **Connie Christopher**, declare as follows:

I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. I am employed by Horvitz & Levy LLP, and my business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436. I am readily familiar with the practice of Horvitz & Levy LLP for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. On **August 4, 2008,** I served the within document entitled: **RESPONDENTS' CONSOLIDATED ANSWER BRIEF TO BRIEFS OF AMICI CURIAE** on the parties in the action by placing a true copy thereof in an envelope addressed as follows:

Parties Served:

SEE ATTACHED LIST

and, following ordinary business practices of Horvitz & Levy LLP, by sealing said envelope and depositing the envelope for collection and mailing on the aforesaid date by placement for deposit on the same day in the United States Postal Service at 15760 Ventura Boulevard, Encino, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **August 4, 2008**, at Encino, California.

Connie Christopher

PROOF OF SERVICE LIST
Episcopal Church Cases
S155094

Counsel Name/Address/Telephone	Party(ies) Represented
Lynn E. Moyer Law Offices of Lynn E. Moyer 200 Oceangate, Suite 830 Long Beach, CA 90802 (562) 437-4407 Fax: (562) 437-6057	Attorneys for Defendants and Respondents: in *O'Halloran v. Thompson* and *Adair v. Poch* Amicus Curiae Jose Poch
Floyd J. Siegal Spile & Siegal. LLP 16501 Ventura Blvd., Suite 610 Encino, CA 91436 (818) 784-6899 Fax: (818) 784-0176	Attorneys for Defendants and Respondents: St. James Parish in Newport Beach, The Rev. Praveen Bunyan, The Rev. Richard A. Menees, The Rev. M. Kathleen Adams, The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, James Dale, Barbara Hettinga, Paul Stanley, Cal Trent, John McLaughlin, Penny Reveley, Mike Thompson, Jill Austin, Eric Evans, Frank Daniels, Cobb Grantham, Julia Houten
Kent M. Bridwell 3646 Clarington Ave. Suite 400 Los Angeles, CA 90034-5022 (310) 837-1553	Attorneys for Defendants and Respondents: in *O'Halloran v. Thompson* and *Adair v. Poch* Amicus Curiae Jose Poch
Eric C. Sohlgren Daniel F. Lula Payne & Fears LLP 4 Park Plaza, Suite 1100 Irvine, CA 92614 (949) 851-1100	Attorneys for Petitioners and Defendants The Rev. Praveen Bunyan et al. Rector Wardens & Vestrymen of St. James Parish in Newport
Robert A. Olson Greines, Martin, Stein & Richland LLP 5900 Wilshire Boulevard, 12th Floor Los Angeles, California 90036 (310) 839-7811	Attorneys for Petitioners and Defendants The Rev. Praveen Bunyan et al.

John R. Shiner Holme Roberts & Owen LLP 777 South Figueroa Street, Suite 2800 Los Angeles, California 90017-5826 (213) 572-4300	Co-Counsel for Plaintiffs and Respondents Jane Hyde Rasmussen et al.
Joseph E. Thomas James M. Whitelaw Jean C. Michel Thomas, Whitelaw & Tyler LLP 18101 Von Karman, Suite 230 Irvine, CA 92612 (949) 679-6400	Attorneys for Plaintiff in Intervention The Episcopal Church
David Booth Beers Heather H. Anderson Goodwin Procter LLP 901 New York Avenue, NW Washington, DC 20001 (202) 346-4000 Fax: (202) 346-4444	Attorneys for Plaintiff in Intervention Episcopal Church USA
Elizabeth F. Stone Goodwin Procter LLP Three Embarcadero center, 24th Floor San Francisco, California 94111 (415) 733-6000	Attorneys for Plaintiff in Intervention Episcopal Church USA
George S. Burns Law Offices of George S. Burns 4100 MacArthur Blvd., Suite 305 Newport Beach, California 92660 (949) 263-6777	Attorneys for Amici Curiae Presbyterian Church (USA); The Synod of Southern California and Hawaii and Presbytery of Hanmi
Tony J. Tanke Attorney at Law 2050 Lyndell Terrace, Suite 240 Davis, CA 95616 (530) 758-4530	Attorney for Amicus Curiae Holy Apostolic Catholic Assyrian Church of the East
Christopher J. Cox Weil Gotshal & Manges LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065 (650) 802-3000	Attorney for Amicus Curiae Kirkpatrick, Clifton, Stated Clerk of the General Assembly of the Presbyterian Church

Randall Mark Penner Penner Bradley et al. 1171 West Shaw Avenue, Suite 102 Fresno, California 93711 (559) 221-2100	Attorney for Amicus Curiae Presbyterian Lay Committee
Donald M. Falk Mayer Brown LLP 2 Palo Alto Square, No. 300 3000 El Camino Real Palo Alto, California 94306 (650) 331-2030	Attorney for Amicus Curiae Presbyterian Lay Committee
Eugene Volokh Mayer Brown LLP 350 South Grand Avenue, 25th Floor Los Angeles, California 90071 (213) 229-9500	Attorney for Amicus Curiae Presbyterian Lay Committee
Kenneth Winston Starr Attorney at Law 24569 Via De Casa Malibu, California 90265 (310) 506-4611	Attorney for Amici Curiae Iglesia Evangelica Latina, a California corporation, et al.
Robert J. Cochran, Jr. Of Counsel Louis D. Brandeis Professor of Law Director, Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics 24255 Pacific Coast Highway Malibu, California 90263 (310) 506-4684	Attorney for Amici Curiae Iglesia Evangelica Latina, a California corporation, et al.
Lu The Nguyen Attorney at Law 2572 McCloud Way Roseville, California 95747 (916) 791-2572	Attorney for Amicus Curiae Charismatic Episcopal Church

Allan E. Wilion Attorney at Law 5900 Wilshire Blvd., Suite 401 Los Angeles, California 90036 (310) 435-7850	Attorney for Amici Curiae Thomas Lee and Rev. Peter Min
Russell Gene Vanrozeboom Wild, Carter & Tipton 246 West Shaw Ave. Fresno, California 93704 (559) 224-2132	Attorney for Amicus Curiae Diocese of San Joaquin
Clerk to Hon. David C. Velasquez Orange County Superior Court Civil Complex Center 751 W. Santa Ana Bld., Bldg 36 Santa Ana, CA 92701	Coordination Trial Judge: Case: JCCP 4392
Clerk, Court of Appeal Fourth Appellate District 925 North Spurgeon Avenue Santa Ana, California 92701	Case Nos. G036408, G036096, G036868